



California Regional Water Quality Control Board

Lahontan Region



Alan C. Lloyd, Ph.D.
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger
Governor

March 21, 2006

To Interested Parties:

REFERRAL OF ENFORCEMENT ACTION TO CALIFORNIA ATTORNEY GENERAL FOR KINDER MORGAN PIPELINE SPILL ON DONNER SUMMIT

At the Lahontan Water Board's April 12 and 13, 2006 meeting, the Board will consider referring to the California Attorney General's office the enforcement action against Kinder Morgan Energy Partners, L.P. for an April 1, 2005 petroleum spill from Kinder Morgan's pipeline near Donner Summit, Placer County. Enclosed are the agenda materials for this item.

Lahontan Water Board staff will accept written comments on this item through April 3, 2006. The Board will take oral public testimony at the public hearing on this item. The meeting will be at the Truckee Donner Public Utility District, 11570 Donner Pass Road, Truckee, California 96160.

Chuck Curtis
Planning and Toxics Division Manager

Enclosure



**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF APRIL 12 AND 13, 2006
Truckee**

ITEM:

**SUBJECT: KINDER MORGAN ENERGY PARTNERS, L.P. – AUTHORIZING
ATTORNEY GENERAL REFERRAL TO SEEK JUDICIAL CIVIL
PENALTIES FOR A FUEL SPILL IN APRIL 2005**

CHRONOLOGY: This is a new issue.

DISCUSSION: Kinder Morgan Energy Partners, L.P. (hereafter “KM”) owns and operates a fuel distribution pipeline transmitting fuel from its Rocklin, California terminal to the terminal in Sparks, Nevada. On or about April 1, 2005, a fuel leak was detected in the pipeline. The leak was located in a remote area near Norden, California. The leak spilled a reported 1,749 gallons of fuel into the upper portion of the Summit Creek drainage and adversely affected waters of the State and their beneficial uses. The release was confined to approximately 0.052 acres within the release area and 3,015 linear feet of creek channel as a result of emergency response actions overseen by the State Department of Fish and Game’s Office of Spill Prevention and Response, U.S. EPA, the Water Board, and other agencies. KM has completed initial response actions. KM has not yet submitted a final restoration plan.

Board staff now seeks to move to the next phase of responding to the Discharge by referring the case to the California Attorney General’s office for judicially imposed civil penalties. The Board has the discretion to administratively impose civil penalties. However, the Board’s referral of the case to the Attorney General’s office is desirable because it would allow different Federal and State agencies to act in a coordinated manner in any action seeking judicial penalties. The U.S. EPA and the Department of Fish and Game have already referred the matter to the Attorney General’s office. In addition, referral may result in higher penalties than those that could be imposed by the Board administratively. For example, under Water Code section 13350, subdivision (d), a court may impose civil liability on a daily basis not to exceed \$15,000 for each day the violation occurs or the court may impose civil liability on a per gallon basis not to exceed \$20 for each gallon of waste discharged. On the other hand, under Water Code section 13350, subdivision (e), the Board may impose civil liability on a daily basis not to exceed \$5,000 for each day the violation occurs or the Board may impose civil liability on a per gallon basis not to exceed \$10 for each gallon of waste discharged.

The proposed Resolution authorizes the Executive Officer to request that the Attorney General seek judicially imposed civil penalties and to seek other remedies as may be permissible and appropriate. The Resolution also authorizes the Executive Officer to seek judicial civil liability in an amount that he deems appropriate and report that amount to the Board

Chair. It should be noted that the Resolution does not make any determination about the extent of the spill or the damages resulting from the spill.

RECOMMENDATION:

Adoption of the Resolution as proposed.

Enclosure:

Proposed Resolution

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION NO. *R6T-2006 -proposed*

AUTHORIZING ATTORNEY GENERAL
REFERRAL REGARDING KINDER MORGAN
ENERGY PARTNERS, L.P., DIESEL FUEL SPILL IN
NORDEN, PLACER COUNTY

- A. WHEREAS, Kinder Morgan Energy Partners, L.P. (hereafter “Discharger”), owns and operates a fuel distribution pipeline, transmitting fuel from the Rocklin terminal in California to a terminal in Sparks, Nevada.
- B. WHEREAS, on or about April 1, 2005, the Discharger discharged approximately 1,749 gallons of a mixture of diesel and gasoline fuel (hereafter “Discharge”) into the uppermost portion of the Summit Creek drainage, a water of the State, from an 8-inch diameter underground pipeline with the location of SE ¼ SW ¼, Section 16, Township 17N, Range 15E. Mt. Diablo Base and Meridian. Global positioning system coordinates: Long. – 120.32466, Lat. – 39.31463.
- C. WHEREAS, the Discharge was confined to approximately 0.052 acres within the release area and 3,015 linear feet of the creek channel by the placement of absorbent pads and booms, skimmers and vacuum trucks to aid in the recovery of emulsified product along Summit Creek during emergency response measures overseen by staff of the California Regional Water Quality Control Board, Lahontan Region (Water Board), the California Department of Fish and Game, Office of Spill Prevention and Response (DFG/OSPR), and other agencies.
- D. WHEREAS, the Discharge has adversely impacted waters of the State and the beneficial uses thereof, including but not limited to wildlife habitat including benthic macroinvertebrates, vegetation, and recreational water supplies.
- E. WHEREAS, the Discharger has cooperated with the Water Board and other agencies and completed the initial emergency response actions and interim remedial actions. The Discharger has not submitted a final restoration plan.
- F. WHEREAS, DFG/OSPR, as a state natural resource trustee, is engaged in Natural Resources Damage Assessment negotiations with the Discharger to recover monies for injury to, destruction of, or loss of natural resources. The Discharger and DFG/OSPR have submitted to the Board all the damage assessment studies that were performed under the NRDA process.
- G. WHEREAS, now that remedial actions are underway, the Water Board finds it is necessary and appropriate to move to the next phase of responding to the Discharge by

referring this matter to the California Attorney General's Office to seek judicially imposed civil penalties and to file such other punitive causes of action and to seek other remedies as may be permissible and appropriate. The Water Board further finds that referring this matter to the Attorney General is appropriate so that there can be coordinated State action in the event other State agencies seek judicial remedies.

- H. WHEREAS, the Discharger has caused or permitted petroleum products to be deposited in or on waters of the State and is, at a minimum, civilly liable under Water Code section 13350, subdivision (a). Under Water Code section 13350, subdivision (d), a court may impose such civil liability either on a daily basis not to exceed fifteen thousand dollars (\$15,000) for each day the violation occurs or on a per gallon basis not to exceed twenty dollars (\$20) for each gallon of waste discharged.
- I. WHEREAS, Water Code section 13350, subdivision (g) requires the Water Board to hold a hearing, with due notice of the hearing to all affected persons, prior to requesting the Attorney General to petition a court to impose, assess, and recover civil liability. On April 12, 2006, the Water Board held such a meeting in compliance with Water Code section 13350, subdivision (g), and considered the testimony and evidence offered at the hearing and in the record.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Water Board hereby authorizes the Executive Officer to request that the Attorney General seek judicially imposed civil penalties pursuant to Water Code section 13350, subdivision (a) and to file such other punitive causes of action and to seek other relief as may be permissible and appropriate.
2. The Water Board hereby authorizes the Executive Officer to seek judicial civil liability in an amount that he deems appropriate and report it to the Board Chair.
3. The Water Board directs the Executive Officer to work in coordination with other State and federal agencies that may be seeking to impose penalties on the Discharger for the Discharge.

I, Harold J. Singer, Executive Officer, hereby certify that the forgoing is a full, true and correct copy of the Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, at its regular meeting on April 12, 2006.

HAROLD J. SINGER
Executive Officer